

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOFIA VASQUEZ, HERMENEGILDO CANDIA, and
MAIRA NARANJO,

Plaintiffs,

-v-

NUEVO TULCINGO AZTECA CORP. d/b/a NUEVO
AZTECA, GILBERTO MOLINA, and ANGEL MOLINA,

Defendants.

CIVIL ACTION NO. 23 Civ. 355 (PGG) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

In connection with Plaintiffs’ motion for a default judgment (ECF Nos. 24–25 (the “Motion”), which the Honorable Paul G. Gardephe has referred to the undersigned for a report and recommendation (ECF No. 33), on February 21, 2024, the Court ordered that Plaintiffs serve various documents on Defendants and file proof service by March 1, 2024. (ECF No. 34 (the “Feb. 21 Order”)). On March 4, 2024, after Plaintiffs failed to comply with the Feb. 21 Order, the Court sua sponte extended to March 8, 2024 Plaintiffs’ deadline to do so. (ECF No. 36 (the “Mar. 4 Order”)). On March 11, 2024, Plaintiffs again having failed to file proof of service and again failing to comply with the Court’s Feb. 21 and Mar. 4 Orders, the Court gave Plaintiffs a final sua sponte extension. (ECF No. 37 (the “Mar. 11 Order”)). The Mar. 11 Order directed Plaintiffs to serve on Defendants the documents filed at ECF Nos. 20–25, 27–30, 32–36, and the Mar. 11 Order itself, and file proof of service by March 18, 2024, and warned Plaintiffs, as it had done previously, that failure to comply would **“result in denial of the Motion and a recommendation to Judge Gardephe to dismiss this action for failure to prosecute.”** (Id. at 1–2 (emphasis in original)).

Yesterday, March 18, 2024, Plaintiffs' counsel submitted an Affidavit of Service indicating that, on March 18, 2024, she "served order Copies of documents **Documents filed at ECF DOCKET 2025, 2730, 3236** in support of Plaintiffs application for Default Judgment to date." (ECF No. 38 at 1 (emphasis and typographical and grammatical errors in original) (the "Affidavit")). While the Court is able to infer, despite the disjointed language in the Affidavit, that Plaintiffs mailed to Defendants the documents at ECF Nos. 20–25, 27–30, and 32–36 (see id. at 1–4), the Affidavit does not indicate that Plaintiffs served on Defendants a copy of the Mar. 11 Order, as the Court required. (See id. at 1; ECF No. 37 at 2 (directing service of "the documents filed at ECF Nos. 20–25, 27–30, 32–36, and this Order")). Thus, in addition to Plaintiffs' failure to comply with the Feb. 21 and Mar. 4 Orders, Plaintiffs have now failed to comply with the Mar. 11 Order. Plaintiffs' omission is not a trivial one, as the Mar. 11 Order advised Defendants of their April 1, 2024 deadline to respond to the Motion. (Id. at 3).

Accordingly, by **March 21, 2024**, Plaintiffs shall serve on Defendants the Mar. 11 Order (ECF No. 37) and this Order, and file proof of service. **As Plaintiffs have now failed to comply with three of the Court's Orders, the Court gives a final warning to Plaintiffs that any failure to comply with this deadline will result in denial of the Motion and a recommendation to Judge Gardephe to dismiss this action for failure to prosecute.**

Given Plaintiffs' delay, Defendants' deadline to respond to the Motion as set forth in the Feb. 21 Order and extended in the Mar. 4 and Mar. 11 Orders is EXTENDED to **April 4, 2024**. **If Defendants (1) fail to respond to the Motion, or (2) fail to contact my Chambers by the date their response to the Motion is due, I intend to issue a Report & Recommendation concerning the Motion and Plaintiffs' damages based on Plaintiffs' written submissions alone, without an**

in-court hearing. See Trans. Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997) (“it [is] not necessary for the District Court to hold a hearing, as long as it ensured that there was a basis for the damages specified in the default judgment”) (quoting Fustok v. ContiCommodity Servs., Inc., 873 F.2d 38, 40 (2d Cir. 1989)).

Dated: New York, New York
March 19, 2024

SO ORDERED.


SARAH L. CAVE
United States Magistrate Judge